



01 MAY 2008

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In re Application of BIRD et al.

Application No.: 10/523,153

PCT No.: PCT/AU03/00954

Int. Filing: 29 July 2003

Priority Date: 29 July 2002

Attorney Docket No.: 83950

For: A BULK COMMUNICATIONS PROCESS

USING MULTIPLE DELIVERY MEDIA

:
: DECISION ON PETITION

:
: UNDER 37 CFR 1.47(a)

This is a renewed decision on applicant's petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 01 May 2007, to accept the application without the signature of joint inventor Michael Robert Stewart. Applicant's request for a three month extension of time is granted.

BACKGROUND

The underlying facts of this case have been presented in earlier decisions. In response to the decision mailed on 18 October 2007, Petitioner filed a renewed petition under 37 CFR 1.47(a) for the remaining nonsigning inventor Stewart, along with the declarations of Carl David Harrap, John McCormack and David Colvin and the accompanying exhibits.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(g), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Items (1), (3) and (4) were previously satisfied.

With respect to Item (2) above, the statements of facts by Carl David Harrap, John McCormack and David Colvin were presented concerning the 37 CFR 1.47(a) applicant's attempt to obtain the signature of nonsigning inventor Michael Robert Stewart.

In their first hand statement of facts, Messrs. Colvin, McCormack and Harrap detail the attempts they individually made to locate the nonsigning inventor Michael Stewart without

success.

Copies of documentary evidence (internet searches and attached notes) were provided to support a finding that the nonsigning inventor could not be found or reached. An attempt to find the nonsigning inventor in Great Britain was conducted after learning that Mr. Stewart was in London. A request from the Postal Service for Mr. Stewart's forwarding address was made and denied. Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a "diligent effort" was made. Petitioner's statement of facts under 37 CFR 1.47(a) indicates that internet searches for Mr. Stewart's new address were made. Diligent efforts to locate the nonsigning inventor using an Internet search were pursued and documented to obtain Mr. Stewart's current address and were unsuccessful.


The action taken by petitioner is sufficient to prove that "a diligent effort" was made to contact the nonsigning inventor Michael Robert Stewart. Under these circumstances, it can be concluded that then nonsigning inventor is unavailable to sign the application. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 06 October 2005. The application has an international filing date of 29 July 2002 under 35 U.S.C. 363, and a date of 06 October 2005 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.



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Dear Mr. Stewart:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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